

Robert A. Julian (SBN 88469)
Cecily A. Dumas (SBN 111449)
BAKER & HOSTETLER LLP
600 Montgomery Street, Suite 3100
San Francisco, CA 94111-2806
Telephone: 415.659.2600
Facsimile: 415.659.2601
Email: rjulian@bakerlaw.com
Email: cdumas@bakerlaw.com

Eric E. Sagerman (SBN 155496)
David J. Richardson (SBN 168592)
Lauren T. Attard (SBN 320898)
BAKER & HOSTETLER LLP
11601 Wilshire Blvd., Suite 1400
Los Angeles, CA 90025-0509
Telephone: 310.820.8800
Facsimile: 310.820.8859
Email: esagerman@bakerlaw.com
Email: drichardson@bakerlaw.com
Email: lattard@bakerlaw.com

Elizabeth Green (*pro hac vice*)
BAKER & HOSTETLER LLP
200 South Orange Avenue, Suite 2300
Orlando, FL 32801-3432
Telephone: 407.649.4000
Facsimile: 407.841.0168
Email: egreen@bakerlaw.com

*Counsel for the Official Committee of Tort
Claimants*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**In re:
PG&E CORPORATION**

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG&E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

**All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

BROWN RUDNICK LLP
Joel S. Miliband (SBN 077438)
(JMiliband@brownrudnick.com)
2211 Michelson Drive
Seventh Floor
Irvine, California 92612
Telephone: (949) 752-7100
Facsimile: (949) 252-1514

BROWN RUDNICK LLP
David J. Molton (SBN 262075)
(DMolton@brownrudnick.com)
Seven Times Square
New York, New York 10036
Telephone: (212) 209-4800
Facsimile: (212) 209-4801

Counsel for Fire Victim Trustee

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**JOINT RESPONSE OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
AND THE FIRE VICTIM TRUSTEE TO
THERESA ANN MCDONALD'S
MOTION FOR RECONSIDERATION
[Dkt. No. 8137]**

1 The Official Committee of Tort Claimants (the “TCC”), in the above-captioned
2 chapter 11 cases of PG&E Corporation and Pacific Gas and Electric Company (collectively,
3 “PG&E”), together with Justice John K. Trotter (Ret.), in his capacity as trustee for the Fire
4 Victim Trust (the “Fire Victim Trustee”), hereby respond to the motion (“Motion”), filed by
5 Theresa Ann McDonald (“Ms. McDonald”), for reconsideration of this Court’s order confirming
6 PG&E’s chapter 11 plan [Dkt. No. 8053] (the “Confirmation Order”).

7 **RESPONSE**

8 **1. Ms. McDonald Does Not Meet the Standard for Reconsideration.**

9 As this Court explained in the Order Denying Motions to Shorten Time and Reconsider
10 [Dkt. No. 8148], the relevant standards for a motion to reconsider are Federal Rules of Civil
11 Procedure (“FRCP”) 59(e) and 60(b). FRCP 59(e) allows a court to amend a judgment when
12 (1) the court is presented with newly discovered evidence; (2) the court committed clear error or
13 the initial decision was manifestly unjust; or (3) there is an intervening change in controlling law.
14 *School Dist. No. 1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir.
15 1993). FRCP 60(b) allows a court to reconsider a judgment “only upon a showing of (1) mistake,
16 surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud; (4) a void judgment;
17 (5) a satisfied or discharged judgment; or (6) extraordinary circumstances which would justify
18 relief.” *School Dist. No. 1J, Multnomah County, Oregon v. ACandS, Inc.*, 5 F.3d at 1263 (internal
19 quotations omitted). Ms. McDonald’s Motion meets none of these standards. Ms. McDonald’s
20 vote to reject the Plan, and the Court’s failure to interpret that vote as an objection to specific
21 provisions in the Fire Victim Trust Agreement and Claims Resolution Procedures, are not newly
22 discovered evidence, clear error, mistake, or any of the other circumstances that would warrant
23 reconsideration of an order.

24 **2. All Claimants Were on Notice of the Claims Resolution Procedures and Had**
25 **Opportunity to Object.**

26 The TCC, seeking input from the Fire Victim Trustee, worked with PG&E to ensure that
27 the disclosure materials sent to victims included easy to understand explanations of the Plan, the
28 Fire Victim Trust Agreement, and the Claims Resolution Procedures. To that end, in addition to

1 receiving the Disclosure Statement [Dkt. No. 6353] and the Fire Victim Claims Resolution
2 Procedures [Dkt. No. 6049-2], fire victims also received a “Plan Treatment Summary,”¹ which
3 included frequently asked questions. All documents stated that a fire victim would have no right
4 to appeal the Trustee’s claim determination to a court.

5 The Disclosure Statement provided:

6 All determinations of Fire Victim Claims, including their eligibility to
7 receive payment from the Fire Victim Trust and in what amount, shall be
8 determined solely under the Fire Victim Claims Resolution Procedures
and all such determinations shall be final with no recourse to any court.

9 Dkt. No. 6353 at 24.

10 The Fire Victim Claims Resolution Procedures, dated March 3, 2020 [Dkt. No. 6049-2],
11 and distributed with the disclosure packet, states at page 8 (emphasis in original):

12 The Trustee Determination will be final, binding, and non-appealable and
13 is not subject to review by any Court, **including right to trial by jury.**

14 The Plan Treatment Summary also states twice that claimants would have the right to
15 dispute their claim determinations within the Fire Victim Trust procedures and would not have
16 the right to a court appeal. On page 2, the Plan Treatment Summary states:

17 **WHAT TO DO IF YOU CONTEST THE FIRE VICTIM TRUST’S**
18 **TREATMENT OF YOUR CLAIM:** If you do not wish to accept either:
19 (1) the Fire Victim Trust’s determination that your claim is ineligible for
20 payment; or (2) the amount awarded by the Fire Victim Trust for your
21 claim, you will have options to seek the review of the determination. Each
22 of these options will be explained in detail in the forthcoming procedures.
In all circumstances, after the exhaustion of the review processes
contained in the forthcoming procedures, the determination from the Fire
Victim Trust, in accordance with the procedures, will be final. If you
contest the Fire Victim Trust’s award and are not represented by legal
counsel, you may wish to consult with legal counsel of your choice.

23 The FAQ section of the Plan Treatment Summary, on pages 10-11, states:

24 28. What if I do not agree with the amount that the Trustee and Claims
25 Administrator determines is eligible to be paid by the Fire Victim Trust?

26 Answer: The options and avenues for review of the Trustee’s and Claims
27 Administrator’s determination will be set out in the Claims Resolution

28 ¹ The Plan Treatment Summary is available at <https://portal-redirect.epiq11.com/PGE2/document/GetDocument.aspx?DocumentId=3639640>.

1 Procedures. As a general matter, if you do not agree with the
2 determination of the eligible amount of your claim, you may ask the
3 Claims Administrator to reconsider the determination. If you still do not
4 agree with the Claims Administrator's decision, you can appeal to a
5 neutral arbitrator, who will hold a hearing on the issue. Finally, if you do
6 not agree with the decision of the neutral arbitrator, you may ask for a
7 panel of three neutral arbitrators to review the decision. Then, the Trustee
8 may accept, reject, or revise the decision of this panel. The Trustee will
9 then issue a Trustee Determination to you. The Trustee Determination is
10 final with no further ability to appeal the determination.

11 The first version of the Plan Treatment Summary was filed on February 21, 2020 [Dkt.
12 No. 5873] and included the above paragraph. On March 9, 2020, the FAQs were added to the
13 Plan Treatment Summary and included the above question as question number 27 [Dkt.
14 No. 6224].

15 Thus, this issue has been disclosed on the docket since February and was subsequently
16 distributed to fire victims as part of the plan solicitation process in March. This disclosure
17 prompted other parties to object to this issue in various filings and hearings since early March.

- 18 • On March 6, 2020, Eric and Julie Carlson filed an objection to the Plan Treatment
19 Summary on the grounds that the document should make clear that the Trustee is
20 the ultimate arbiter of the claim and can override any appeal process [Dkt. No.
21 6176].
- 22 • On May 5, 2020, the Adventist, AT&T, and Paradise entities objected to the
23 provision at issue here [Dkt. No. 7072]. At that time, other claimants, such as
24 Eric and Julie Carlson, also filed joinders to that objection [Dkt. No. 7207].
- 25 • On May 15, 2020, other claimants, such as Mary Kim Wallace, filed objections to
26 plan confirmation that included objections on this issue [Dkt. No. 7367], and this
27 issue was raised multiple times as part of the confirmation hearings.

28 This Court held a hearing on the Fire Victim Trust Agreement issues on May 15, 2020,
and issued a memorandum decision on May 26, 2020, ruling that those who filed confirmation
objections on this issue may receive court review of their claims [Dkt. No. 7597]. Despite being
on notice of this issue since at least February and with various parties raising the same issue at
various hearings, Ms. McDonald only filed a confirmation objection on June 15, 2020, one

1 month after the confirmation objection deadline, *and did not raise the issue of judicial review*
2 [Dkt. No. 7943]. Ms. McDonald then filed this Motion on June 26, 2020, 40 days after
3 confirmation objections were due and one month after this Court issued its memorandum
4 decision on the issue. Her untimeliness is not grounds for and indeed should defeat
5 reconsideration.

6 **3. All Objections to the Plan Were Required to Be in Writing.**

7 The Claims Resolution Procedures and the Trust Agreement are included in the Plan as
8 part of the Plan Supplement. *See Notice of Filing Ninth Supplement to Plan Supplement*, dated
9 June 21, 2020, Dkt. No. 8057. Bankruptcy Rule 3020 provides that in a chapter 11 case, “[a]n
10 objection to confirmation of the plan shall be filed and served on the debtor, the trustee, the
11 proponent of the plan, any committee appointed under the Code and any other entity designated
12 by the court, within a time fixed by the court...An objection to confirmation is governed by
13 Rule 9014.” Fed. R. Bankr. P. 3020(b). Local Bankruptcy Rule 3020-1(e) also imposes a meet
14 and confer requirement on parties objecting to confirmation prior to the confirmation hearing on
15 the disputed issues.

16 Here, the Court fixed May 15, 2020 at 4:00 p.m. as the deadline for filing and serving
17 objections to confirmation. *See* Dkt. No. 5732. The Court approved the Debtors’ form of
18 confirmation hearing notice, which required parties who seek to object to confirmation to state
19 their objections in writing, file the objection with the Bankruptcy Court by the May 15, 2020
20 deadline, and serve it on notice parties, including the Debtors, their attorneys and the TCC’s
21 attorneys. In large print, the notice states:

22 IF ANY OBJECTION TO CONFIRMATION OF THE PLAN IS NOT
23 TIMELY FILED AND SERVED STRICTLY AS PRESCRIBED HEREIN,
24 THE OBJECTING PARTY MAY BE BARRED FROM OBJECTING TO
CONFIRMATION OF THE PLAN AND MAY NOT BE HEARD AT THE
CONFIRMATION HEARING.

25 PURSANT TO THE SCHEDULING ORDER, PRINCIPAL COUNSEL
26 REPRESENTING A PARTY, OR ANY PRO SE PARTY, OBJECTING TO
27 CONFIRMATION OF THE PLAN MUST APPEAR IN PERSON AT A
28 PRE-CONFIRMATION SCHEDULING CONFERENCE ON MAY 19, 2020
AT 10:00 AM (PREVAILING PACIFIC TIME) TO DISCUSS
SCHEDULING ANY EVIDENTIARY MATTERS TO BE DEALT WITH
IN CONNECTION WITH THE CONFIRMATION HEARING AND

1 SCHEDULING FOR BRIEFING OF CONTESTED LEGAL ISSUES.
2 FAILURE TO APPEAR MAY RESULT IN THE OBJECTION BEING
3 STRICKEN.

4 *See* Dkt. No. 6340-4.

5 Ms. McDonald filed a confirmation objection on June 15, 2020 [Dkt. No. 7943]. This
6 objection was one month late and failed to raise the issues that are raised in the instant Motion.
7 Ms. McDonald asserts for the first time in this Motion that the Court should interpret her “no”
8 vote on the Plan (and all other votes by claimants in the same class to reject the plan), as an
9 objection to “all of the Plan’s parts.” *See* Motion at 2. A determination that a “no” vote by a
10 creditor constitutes a plan objection on every possible objectionable issue within a plan and all
11 exhibits thereto would lead to the absurd result of a debtor having to anticipate the objections in
12 the heads of those voting to reject a plan and would put a huge undue burden on the courts of
13 trying to resolve unarticulated objections. A court would then have to rule on these unstated and
14 unexplained objections without the objector ever appearing. It would also undermine the finality
15 of a chapter 11 process and open the door for other parties to raise late objections based on their
16 “no” vote on the Plan. Such an outcome would create chaos and ignore basic tenets of
17 procedural rules. The federal and local bankruptcy rules impose requirements on objectors to
18 confirmation – not only must they file an objection in writing by the applicable deadline, but
19 they must also attend a meet and confer. Ms. McDonald’s request to treat a “no” vote as an
20 objection is untenable.

21 This conclusion is further supported by established law that holds that a court of appeals
22 will not hear an issue that was not sufficiently raised before the trial court. *See Broad v. Sealaska*
23 *Corp.*, 85 F.3d 422, 430 (9th Cir. 1996) (following *Singleton v. Wulff*, 428 U.S. 106, 120 (1976)).
24 Likewise, it is inappropriate for a party to raise a new argument in a motion for reconsideration.
25 *See Trading Bay Energy Corp. v. Union Oil Co. of Cal.*, No. 04-36001, 2006 WL 4381172, at *2
26 (9th Cir. Nov. 9, 2006); *389 Orange Street Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999).
27 By failing to timely file an objection that stated with particularity the basis and nature of their
28 objection to the confirmation of the Plan, Ms. McDonald and the other fire victims that voted
against the Plan but did not timely file objections failed to raise any issues before this Court

1 regarding the confirmation of the Plan. The TCC is not aware of a single case in which a court
2 has ever held that a vote to reject a plan is the equivalent to the filing of an objection setting forth
3 legal and factual arguments against plan confirmation.

4 **4. Claimants Who Voted to Reject the Plan Are Still Bound by the Plan.**

5 The provision to which Ms. McDonald is now objecting to was disclosed multiple times
6 in multiple documents and was raised by other parties at several Court hearings. She, and all
7 other claimants, are bound by the provisions in the Plan. Section 1141 of the Bankruptcy Code
8 provides: “*the provisions of a confirmed plan bind* the debtor, any entity issuing securities under
9 the plan, any entity acquiring property under the plan, and *any creditor*, equity security holder, or
10 general partner in the debtor, whether or not the claim or interest of such creditor, equity security
11 holder, or general partner is impaired under the plan and *whether or not such creditor*, equity
12 security holder, or general partner *has accepted the plan.*” 11 U.S.C. § 1141 (emphasis supplied).
13 Ms. McDonald raises no points of law or fact that require this Court to reconsider its previous
14 rulings on this issue.

15 **CONCLUSION**

16 For the reasons stated above, the TCC and the Fire Victim Trustee respectfully requests
17 the Court to deny the relief requested by Ms. McDonald’s Motion.

18
19 Dated: July 8, 2020

20 BAKER & HOSTETLER LLP

21 By: /s/ Elizabeth A. Green
Elizabeth A. Green

22 *Counsel for the Official Committee of Tort*
23 *Claimants*

24 BROWN RUDNICK LLP

25 By: /s/ David J. Molton
26 David J. Molton

27 *Counsel for the Fire Victim Trustee*
28